

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUSSELL S. GRANT,

Plaintiff,

v.

D. RIOS,

Defendant.

No. 1:20-cv-0908 JLT EPG (PC)

ORDER ADOPTING IN PART THE  
FINDINGS AND RECOMMENDATIONS  
AND REFERRING THE MATTER TO THE  
MAGISTRATE JUDGE FOR AN  
EVIDENTIARY HEARING

(Docs. 41, 49)

Russell Grant asserts seeks to hold correctional officer D. Rios liable for the use of excessive force in violation of Plaintiff's rights arising under the Eighth Amendment. (*See* Docs. 1, 13, 14.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Defendant asserts Plaintiff failed to exhaust his available administrative remedies, and moved for summary judgment. (Doc. 41.) Defendant requested an evidentiary hearing if the Court determined there was a genuine dispute of material fact. (*Id.* at 1-2.) The assigned magistrate judge entered Findings and Recommendations related to the motion. (Doc. 49.) Based upon the evidence presented, the magistrate judge found "a genuine dispute of material fact regarding whether Plaintiff timely filed a grievance regarding the claim that is proceeding in this action." (*Id.* at 13.) Therefore, the magistrate judge recommended the motion for summary judgment be denied. (*Id.*) In addition, the magistrate judge recommended the stay in the action

1 be lifted, previously vacated deadlines be reset, and evidentiary hearing be held “to determine  
2 whether Plaintiff exhausted his administrative remedies by timely filing a grievance regarding his  
3 claim that was improperly processed by prison officials.” (*Id.*)

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court conducted a *de*  
5 *novo* review of the matter. The Court agrees there is a dispute of material fact concerning  
6 Plaintiff’s exhaustion of available administrative remedies, and that an evidentiary hearing is  
7 necessary for the Court to resolve the dispute. Accordingly, the Court **ORDERS**:

- 8 1. The Findings and Recommendations issued on April 27, 2022 (Doc. 49), are  
9 adopted in part. The Court agrees that there exists a genuine dispute of material  
10 fact but declines to deny the motion for summary judgment at this time.
- 11 2. This matter is referred to the assigned magistrate judge to conduct an evidentiary  
12 hearing to determine whether Plaintiff exhausted his administrative remedies and  
13 to re-evaluate the pending motion for summary judgment in light the of findings  
14 adduced at the evidentiary hearing.

15  
16 IT IS SO ORDERED.

17 Dated: **June 8, 2022**

  
UNITED STATES DISTRICT JUDGE